



AN ACT REVISING UNEMPLOYMENT INSURANCE BENEFIT LAWS; CLARIFYING THE DEFINITION OF "BENEFIT YEAR"; UPDATING LAWS ON TRANSFER OF DUTIES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; CLARIFYING THE USE AND PROCEDURES FOR MONEY CREDITED TO THE UNEMPLOYMENT TRUST FUND BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES; AUTHORIZING THE DEPARTMENT TO CHARGE FOR PROVIDING INFORMATION TO THE RAILROAD RETIREMENT BOARD; REVISING THE PROVISIONS RELATING TO RECIPROCAL BENEFIT ARRANGEMENTS WITH OTHER STATES AND THE FEDERAL GOVERNMENT; DISTINGUISHING BETWEEN THE DEFINITIONS OF "FEDERAL FISCAL YEAR" AND "STATE FISCAL YEAR"; REVISING THE COMPUTATION OF PAYMENTS IN LIEU OF CONTRIBUTIONS; MODIFYING THE CALCULATION TO DETERMINE THE MINIMUM WEEKLY BENEFIT AMOUNT; REVISING CRITERIA FOR DISQUALIFICATION FOR BENEFITS BASED UPON FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK; REVISING CRITERIA FOR PROMPT PAYMENT OF CLAIMS; REVISING PROVISIONS RELATING TO FALSE STATEMENTS AND MISREPRESENTATIONS; AMENDING SECTIONS 39-51-201, 39-51-301, 39-51-310, 39-51-404, 39-51-406, 39-51-407, 39-51-408, 39-51-503, 39-51-504, 39-51-602, 39-51-1105, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1302, 39-51-2201, 39-51-2304, 39-51-2306, 39-51-2401, 39-51-2405, 39-51-2408, AND 39-51-3204, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the

arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year"; ~~with respect to any individual~~, means the 52-consecutive-week period beginning with the first day of the calendar week in which ~~the an~~ individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base ~~year~~ period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the ~~base period~~ benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with

the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration -- duties and powers of department -- emergency provisions. (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

- (i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and
- (ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

~~(6) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.~~

~~_____ (7) The department shall succeed the department of revenue in its rights to property relating to the~~

~~termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.~~

~~——— (8) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding:~~

~~——— (b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109:~~

~~——— (c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions:~~

~~——— (9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor."~~

Section 3. Section 39-51-310, MCA, is amended to read:

"39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws ~~concerning benefits.~~"

Section 4. Section 39-51-404, MCA, is amended to read:

"39-51-404. ~~Administrative expenses~~ Special administrative funds. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to ~~sections section~~ section 903 and ~~904~~ of the Social Security Act, 42 U.S.C. 1103 and ~~1104~~, as amended, may be used.

pursuant to a specific appropriation by the legislature, for the payment of expenses incurred by the department for the administration of the unemployment insurance laws and public employment offices. The appropriation must specify the purposes of the appropriation and the amounts of the appropriation. ~~requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:~~

——— (a) ~~specifies the purposes for which the money is appropriated and the amounts appropriated; and~~

——— (b) ~~limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act, 42 U.S.C. 1103 and 1104, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.~~

——— (2) ~~For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.~~

~~(3)~~(2) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

~~(4)~~(3) The following assessments must be levied against and paid by the indicated employers:

~~(a)~~ beginning January 1, 2008:

~~(i)~~(a) 0.13% of all taxable wages paid by employers assigned a Rate Class 1, Schedules I and II, and Rate Class 2, Schedule I, contribution rate as provided in 39-51-1218;

~~(ii)~~(b) 0.18% of all taxable wages paid by employers assigned a contribution rate other than Rate Class

1, Schedules I and II, and Rate class 2, Schedule I, as provided in 39-51-1218;

~~(iii)~~(c) 0.18% of all taxable wages paid by employers assigned an industrial rate as provided in 39-51-1217;

~~(iv)~~(d) 0.08% of total wages paid by all employers as provided in 39-51-1124;

~~(b)~~(e) ~~beginning July 1, 2008~~; 0.09% of total wages paid by all employers as provided in 39-51-1212.

~~(5)~~(4) All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

~~(6)~~(5) The following assessments and investment income from those assessments are designated to be used for the administration of the unemployment insurance program:

(a) 0.05% of all taxable wages paid by all employers as provided in 39-51-1218;

(b) 0.05% of all taxable wages paid by employers assigned an industry rate as provided in 39-51-1217;

(c) 0.03% of total wages paid by all employers as provided in 39-51-1124; and

(d) ~~beginning July 1, 2008~~; 0.04% of total wages paid by all employers as provided in 39-51-1212.

~~(7)~~(6) If unemployment insurance funding sources exceed the needs of the unemployment insurance program, all or a portion of the excess may be appropriated and used for the purposes outlined in 39-51-409."

Section 5. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is ~~appropriated and made~~ available for appropriation to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration of unemployment insurance laws.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, ~~Title III~~, of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section

302, ~~Title III~~, of the Social Security Act, 42 U.S.C. 502, as amended; and

(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from the United States or any agency of the United States that are designated for use in the administration of the unemployment insurance program.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

Section 6. Section 39-51-407, MCA, is amended to read:

"39-51-407. Reimbursement of fund by state. ~~This state recognizes its obligation to replace and pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency of the United States under Title III of the Social Security Act (now Subchapter III), any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act (29 U.S.C. 49, et seq.), and any money made available by the state or its political subdivisions and matched by money granted to this state pursuant to the provisions of the Wagner-Peyser Act that the secretary of labor finds have;~~ The state of Montana shall replace within a reasonable time any money received under section 302 of the Social Security Act, 42 U.S.C. 502, that, because of any action or contingency, has been lost or have has been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor of the United States for the proper administration of this chapter Montana's unemployment insurance laws. The money must be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker of the house of representatives and

~~the president of the senate, the amount required for replacement of the money."~~

Section 7. Section 39-51-408, MCA, is amended to read:

"39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of ~~such~~ any advances in accordance with the conditions specified ~~by congress in section 1201 of the Social Security Act, 42 U.S.C. 1321.~~

(2) (a) The interest cost, if any, from ~~such~~ the advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate ~~will~~ must be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section."

Section 8. Section 39-51-503, MCA, is amended to read:

"39-51-503. Agreements with railroad retirement board. (1) The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities, ~~and to~~

(2) The department shall make available to the railroad retirement board the records of the department ~~relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.); together with employee wage records and other data that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq. Any money received by the department from the railroad retirement board or any other~~

governmental agency with respect to the establishment, maintenance, and use of employment service facilities must be paid into and credited to the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

(3) The department may charge reasonable fees commensurate with the costs of producing and providing information pursuant to this section. The department shall deposit the fees in the department's state special revenue account."

Section 9. Section 39-51-504, MCA, is amended to read:

"39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into reciprocal benefit arrangements with the appropriate agencies of other states, or the federal government, or both.

(2) (a) whereby individuals Subject to subsection (2)(b), services performed by an individual performing services in this and other states for a single employing unit that are customarily performed in more than one state may be considered to be performed entirely within any one of the states in which:

- (i) any part of the services are performed;
- (ii) the individual maintains the individual's residence; or
- (iii) the employing unit maintains a place of business.

(b) An election made by the employing unit and approved by the department must be in place and must designate in which of the states described in subsection (2)(a) the services must be considered to have been performed. under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund:

(2)(3) The department shall participate in any arrangements, approved by the U.S. secretary of labor, for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered by the unemployment laws of another state or the federal government provided that the arrangements contain provisions:

(a) for the application of the base period of a single state to a claim involving the combining of an individual's wages and employment covered by the laws of two or more states; with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

~~—— (a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;~~

(b) ~~such that the~~ combining of wages will not involve the duplicate use of ~~such~~ wage credits; and

(c) ~~such that the~~ other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for ~~such the~~ portion of benefits paid under this chapter upon the basis of ~~such the~~ wages or services as the department finds will be fair and reasonable as with regard to all affected interests; ~~and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests; and~~

(d) ~~Reimbursements so that the reimbursements payable shall~~ must be deemed considered to be benefits for the purposes of this chapter.

(4) Wages or services for which an individual may become entitled to benefits under the unemployment insurance laws of another state or the federal government must be considered wages for employment for benefit purposes by employers.

~~(3)(5)~~ The department is ~~hereby~~ authorized to ~~make issue reimbursements~~ to other state or federal agencies and to receive reimbursements from other state or federal agencies and to deposit or withdraw the reimbursements from ~~or to~~ the unemployment insurance fund in accordance with arrangements made pursuant to this section."

Section 10. Section 39-51-602, MCA, is amended to read:

"39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department ~~for the purposes of this chapter~~ must be kept on the basis of wages paid, ~~except that for the~~ For purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including

lump-sum payments of accrued wages, ~~must~~ may be assigned to periods of time ~~as~~ determined in accordance with rules adopted by the department."

Section 11. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) ~~and (2)~~, is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

- (i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and
- (ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.

(4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers of the limited liability company."

Section 12. Section 39-51-1121, MCA, is amended to read:

"39-51-1121. Definitions. As used in part 12 and this part, the following definitions apply:

(1) "Computation date" means the 12-month reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject ~~under~~ to this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject ~~under~~ to this chapter for the 3 ~~fiscal~~ federal fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) ~~"Fiscal"~~ "Federal fiscal" year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 ~~fiscal~~ federal fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

~~(8)~~ "State fiscal year" means the four consecutive calendar quarters ending on June 30.

~~(8)(9)~~ "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404 for each calendar year. Payment of contributions and of assessments under 39-51-404 may apply only to wages paid up to and including the amount specified in 39-51-1108."

Section 13. Section 39-51-1125, MCA, is amended to read:

"39-51-1125. Computation of payments in lieu of contributions. (1) ~~After June 30, 1987, qualified employers~~ Employers electing to make payments in lieu of contributions ~~under 39-51-1103~~ shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. ~~After December 31, 1978, governmental~~ Governmental entities shall pay the full amount of extended benefits.

~~(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the~~

~~individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.~~

~~(3)(2)~~ If When the base period wages of an individual include wages from more than one ~~such~~ employer, the amount to be paid into the fund with respect to the benefits paid to the individual ~~shall~~ must be prorated among the liable employers in proportion to the wages paid to the individual by each ~~such~~ employer during the base period.

~~(4)(3)~~ The amount of payment required from employers ~~shall~~ must be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency ~~shall~~ must be assessed ~~such to~~ employers as specified in 39-51-1301.

~~(5)(4)~~ A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual ~~with no~~ without a reduction in hours or wages."

Section 14. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. ~~(1) Governmental entities covered under this chapter shall make payments at the median rate.~~

~~(2)(1)~~ The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates ~~so~~ fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

~~(3)(2)~~ New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

~~(4)(3)~~ The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

~~(5)~~(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

~~(6)~~(5) The computed rate is effective July 1 of each year.

~~(7)~~(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

~~(8)~~(7) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual ~~with no~~ without a reduction in hours or wages."

Section 15. Section 39-51-1213, MCA, is amended to read:

"39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 federal fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the federal fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the federal fiscal year

ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class number listed in the table that represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, ~~all such~~ those employers are included in and assigned the contribution rate specified for the class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%."

Section 16. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If ~~any~~ an employer fails to file

a report or return as required under this chapter or the ~~regulations of~~ rules adopted by the department ~~adopted thereunder~~ within the time specified or if the employer's records are inaccurate or are incomplete when an employer has ~~already~~ filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by ~~making up such~~ estimating the report and determining the amount of taxes due and owing to the fund upon the basis of ~~such any~~ information as that the department may be able to obtain, ~~and thereupon the same shall~~ The tax must be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making ~~such a~~ summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail ~~in the usual course at~~ sent to the ~~last known~~ last-known mailing address or principal place of business operated by the employer. ~~Such~~ The assessment ~~shall be~~ is final unless:

(a) the employer ~~shall protest such~~ protests the assessment in writing within 15 days after service of the notice; ~~or;~~

(b) ~~within the same period of time;~~ the employer ~~shall file~~ files within 15 days after service of the notice a correct, signed, and sworn report and statement as provided ~~for by the~~ this chapter and the ~~regulations~~ rules of the department; ~~or~~

(c) the department has good cause to amend the summary or jeopardy assessment, in which case the department shall notify the employer in the manner provided for in this subsection (2).

(3) Upon written protest being filed ~~by an employer, as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final~~ the department may reconsider the summary or jeopardy assessment, and if the department redetermines the assessment, it shall notify the employer of its redetermination and the reasons for the redetermination. A summary or jeopardy assessment or redetermination by the department under this subsection is final unless the employer submits a written appeal within 10 days in the same manner as provided in 39-51-1109."

Section 17. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount -- determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage.

(3) The maximum and minimum weekly benefit amounts are computed in the following manner:

(a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 19% of the average weekly wage.

~~(iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.~~

(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 20% of the average weekly wage.

~~(iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount."~~

Section 18. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) (a) An individual is disqualified for benefits if the individual fails without good cause to:

(i) apply for available and suitable work when directed to do so by the employment office or the department; or

(ii) accept an offer from a former employer or a new employer of suitable work that the individual is physically able and mentally qualified to perform; ~~or~~

~~——— (iii) return to customary self-employment, if any, when directed to do so by the department.~~

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, ~~provided the individual has not left this work under disqualifying circumstances.~~ The services ~~must~~ constitute employment as defined in 39-51-203 ~~and 39-51-204.~~

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

- (a) the degree of risk involved to the individual's health, safety, and morals;
- (b) the individual's physical fitness and prior training;
- (c) the individual's experience and previous earnings;
- (d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), work may not be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the

criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. ~~An~~ However, an individual, ~~however,~~ is not required to accept a job paying less than the federal minimum wage."

Section 19. Section 39-51-2306, MCA, is amended to read:

"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) An individual is disqualified for benefits for any week with respect to which the individual receives payment for the week or part of the week in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States. However, when an injured claimant ceases to draw compensation benefits and returns to the labor market, the claimant is entitled to receive unemployment compensation benefits under this chapter if the claimant is otherwise qualified. Compensation received as a payment for a permanent partial disability may not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter if the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq., or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual receives benefits under an unemployment compensation law of another state or of the United States if the benefits are paid pursuant to 39-51-504.

(2) If an individual receives wages, compensation, or benefits as set forth in subsection (1) after payment of unemployment benefits with respect to the same week for which unemployment benefits were received, the individual shall repay the unemployment benefits, and the department may collect the unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206."

Section 20. Section 39-51-2401, MCA, is amended to read:

"39-51-2401. Claims to be made in accordance with regulations -- ~~employers to post and make available copies of such regulations~~ notice of coverage. Claims for benefits ~~shall~~ must be made in accordance with ~~such regulations as~~ rules adopted by the department ~~may prescribe~~. Each employer shall post and maintain printed statements of ~~such regulations~~ the notice of coverage that is prepared and distributed by

~~the department in places readily accessible to individuals in his the employer's service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall~~ The notice of coverage must be supplied by the department to each employer without cost to him the employer."

Section 21. Section 39-51-2405, MCA, is amended to read:

"39-51-2405. Prompt payment of claims. (1) ~~Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall~~ Benefits must be paid promptly in accordance with the most recently issued:

(a) ~~a determination or redetermination under 39-51-2402;~~
 (b) ~~or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 39-51-2403;~~
 (c) decision of the board under 39-51-2404; or
 (d) decision of a reviewing court pursuant to a judicial review initiated under 39-51-2404. ~~upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.~~

~~——— (2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.~~

(2) The filing of a request for redetermination, an appeal, or a request for judicial review may not delay or postpone the payment of benefits until the determination, redetermination, or decision has been modified or reversed.

(3) An individual considered eligible to receive benefits must be paid promptly regardless of any further appeal or disposition of an appeal that is not a final disposition of the case. An injunction, stay, writ, or other

process suspending the payment of benefits may not be issued by the board or a court until the final disposition of the case."

Section 22. Section 39-51-2408, MCA, is amended to read:

"39-51-2408. Disputed claim -- records of all proceedings to be kept. A full and complete record ~~shall~~ must be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim ~~shall~~ must be recorded but need not be transcribed unless ~~the disputed claim is further appealed~~ required by a district court or appellate court for judicial review."

Section 23. Section 39-51-3204, MCA, is amended to read:

"39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records -- criminal penalty. (1) Any employing unit or any officer or agent of an employing unit or any other person ~~who makes~~ may not make a false statement or representation knowing it to be false or ~~who~~ knowingly ~~fails~~ fail to disclose a material fact in order to:

(a) prevent or reduce the payment of benefits to any entitled individual; ~~entitled thereto or to avoid becoming or remaining subject hereto or to~~

(b) avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government; or

(c) avoid the requirements of this chapter. ~~or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder~~

(2) An employing unit, any officer or agent of an employing unit, or any other person who violates a provision of subsection (1) shall be punished by a fine of not less than \$50 or more than \$500, or by imprisonment for not less than 3 days or more than 30 days in the county jail, or by both, such fine and imprisonment, and each such ~~Each~~ false statement or representation or failure to disclose a material fact and each day of ~~such the~~ failure to disclose ~~or refusal shall constitute~~ constitutes a separate offense.

(3) An employing unit or any officer or agent of the employing unit is subject to the penalty provisions of subsection (2) for willfully failing or refusing to:

- (a) make any contributions or payments required by this chapter;
- (b) furnish any reports required by this chapter; or
- (c) produce or permit the inspection or copying of any records or materials as required by this chapter."

Section 24. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
HB 0076, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 76
INTRODUCED BY P. BECK
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT REVISING UNEMPLOYMENT INSURANCE BENEFIT LAWS; CLARIFYING THE DEFINITION OF "BENEFIT YEAR"; UPDATING LAWS ON TRANSFER OF DUTIES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; CLARIFYING THE USE AND PROCEDURES FOR MONEY CREDITED TO THE UNEMPLOYMENT TRUST FUND BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES; AUTHORIZING THE DEPARTMENT TO CHARGE FOR PROVIDING INFORMATION TO THE RAILROAD RETIREMENT BOARD; REVISING THE PROVISIONS RELATING TO RECIPROCAL BENEFIT ARRANGEMENTS WITH OTHER STATES AND THE FEDERAL GOVERNMENT; DISTINGUISHING BETWEEN THE DEFINITIONS OF "FEDERAL FISCAL YEAR" AND "STATE FISCAL YEAR"; REVISING THE COMPUTATION OF PAYMENTS IN LIEU OF CONTRIBUTIONS; MODIFYING THE CALCULATION TO DETERMINE THE MINIMUM WEEKLY BENEFIT AMOUNT; REVISING CRITERIA FOR DISQUALIFICATION FOR BENEFITS BASED UPON FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK; REVISING CRITERIA FOR PROMPT PAYMENT OF CLAIMS; REVISING PROVISIONS RELATING TO FALSE STATEMENTS AND MISREPRESENTATIONS; AMENDING SECTIONS 39-51-201, 39-51-301, 39-51-310, 39-51-404, 39-51-406, 39-51-407, 39-51-408, 39-51-503, 39-51-504, 39-51-602, 39-51-1105, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1302, 39-51-2201, 39-51-2304, 39-51-2306, 39-51-2401, 39-51-2405, 39-51-2408, AND 39-51-3204, MCA; AND PROVIDING AN EFFECTIVE DATE.